

A
COLLECTION
OF SOME
Memorable and Weighty
TRANSACTIONS
IN
PARLIAMENT,
In the Year 1678, and afterwards;
In Relation to the IMPEACHMENT of
THOMAS Earl of DANBY.

The KING said to SHIMEI, *Thou knowest all the Wickedness which thy Heart is privy to; therefore the Lord shall return thy Wickedness on thy own Head, and King Solomon shall be blessed: So the King commanded Benaiah, who went out and fell upon him that he died; And the Kingdom was established in the Hand of Solomon.*

London, Printed in the Year, MDCXCV.

Harvard College Library
Coolidge Fund
September 18, 1940.

245
41

A Collection of the Transactions in Parliament in 1678, and afterwards, in relation to *Thomas Earl of Danby.*

THE Right of Impeachments by the House of Commons, being a Matter wherein the People of England are so highly concerned, it is hoped it may not be thought unseasonable to publish the ensuing Collections relating thereunto, out of several scattered Papers formerly published, and not at present to be recovered without difficulty; and the rather, because in this Case were discussed several Points of no small Moment; As the King's Power of pardoning the Person impeached; the sequestring him from Parliament, and imprisoning his Person; and also the Right of the Bishops to sit and vote in Capital Cases.

Which therefore are here faithfully and impartially presented to the Reader's view.

Thursday the 19th of December, 1678.

THE Chancellor of the Exchequer acquainted the House of Commons, That he was commanded by the King to inform the House, that his Majesty had received Information, that his late Ambassador in France, Mr. MOUNTAGUE a Member of the House, had held several private Conferences with the Pope's Nuncio there, without any Directions or Instructions from his Majesty. The King, to the end he might know the Truth of that Matter, had given Orders for the seizing Mr. Mountague's Papers.

The House thereupon ordered the Lord *Cavendish*, and other Members, to attend the *King*, to desire him to inform the House, Whether the Information against Mr. *Mountague* was given upon Oath; and of what Nature the Offence was that is thus complained of.

The Lord *Cavendish* reported, That they had been to attend the *King*, and that he sent them word out of the House of *Lords*, That *he was very busy*, and had rather they should attend him at *Whitehall* when the House was up.

Mr. *Mountague* then acquainted the House, That he had in his Custody several Papers which might tend to the *King's* Safety, and the Preservation of the Kingdom. Whereupon,

It was ordered, That the Lord *Russel*, Sir *Scroop Howe*, and Sir *Henry Capel*, should take Mr. *Mountague's* Direction, and immediately bring the Writings to the House.

They having brought a Box of Writings, Mr. *Mountague* took thereout *two Letters* subscribed *DANBY*, and presented them to the House.

In one of the Letters, dated the 17th of Jan. 1677. were these Clauses.

‘ *Monsieur Rouvigne's* Son came to me Yesterday, with *Monsieur Barillon*, (having given me his Father's Letter the Day before) and discours'd much upon the Confidence his King hath of the Firmness of our's to him; of the good Opinion his Master hath of me; and of his King's Resolution to condescend to any thing that is not infamous to him, for the Satisfaction of our King: How certainly our King may depend upon all sorts of Assistances and Supplies from his Master in case the Friendship be preserved. ——— As to our main Points of Peace and War, it will certainly depend upon the King of *France's* consenting to the first Propositions.

tions——nor will the Time for that Consideration be much longer, since it will be impossible but *the King must come to some Declaration of his Mind to the Parliament when it meets*——I am assured, that one principal Cause of the Adjournment for thirteen Days has been to see if any Expedient for the Peace could have been found in that Time; and the Effect of the Adjournment hath hitherto been, that no Body will now believe other than that the Peace is already concluded between us and *France*.

The other Letter, dated the 25th of March, 1678. had these Clauses.

‘It is necessary to inform you, that for fear of its being ill resented by the Parliament here, the King will not make any Proposals at all of Peace, unless he shall be press’d to it by the Confederates——In Case the Conditions of the Peace shall be accepted, *the King expects to have six Millions of Livres yearly for three Years*, from the Time that this Agreement shall be signed betwixt his Majesty and the King of *France*; because it will be two or three Years before he can hope to find his Parliament in a Humour to give him Supplies, after the having made any Peace with *France*: And the Ambassador here hath agreed to that Sum, but not for so long a Time. If you find the Peace will not be accepted, you are not to motion the Money at all: And all possible Care must be taken, to have this whole Negotiation as private as is possible, for fear of giving Offence at Home——You must not mention a Syllable of the Money to the Secretary.

These Letters being read, the House resolved that *there was sufficient Matter of Impeachment* against the Lord Treasurer, and appointed the Lord Cavendish, Mr. Sacheverel, Mr. Williams,

liams, and others, a Committee to draw up Articles against him.

Upon Friday the 20th of *December*,

My Lord *Cavendish* acquainted the House, that the King returned Answer to the Vote of the House about Mr. *Mountague*, That he did intend to communicate to the House the Matter of the Information against Mr. *Mountague*, and *will do it when he thinks convenient*. [*That convenient time never came.*]

Saturday the 21st of December.

Mr. *Williams* reported Articles of *Impeachment* of High-Treason against *Tho. Earl of Danby*, Lord High Treasurer of *England*, to this Effect.

“ 1. That he hath traiterously encroached to himself *Regal Power*, by treating in Matters of Peace and War, &c.

“ 2. That he hath traiterously endeavoured to subvert the Antient Form of Government, and to introduce an *Arbitrary* and *Tyrannical* way of Government, &c.

“ 3. That he traiterously intending to hinder the meeting of *Parliaments*, and thereby to alter the Constitution of the Government, did *propose and negotiate a Peace for the French King*; for the doing whereof he did intend to procure a great Sum of Money from the French King, for enabling him to maintain his Traiterous Designs.

“ 4. That he hath traiterously concealed and suppressed the Evidence of the horrid Plot of the Papists.

“ 5. That he hath wasted the King's Treasure, by issuing great Sums for unnecessary *PENSIONS* and *Secret Services*, to the value of 231602 *l.* within two Years, and hath wholly diverted out of the known Method of the Exchequer one whole Branch of the Revenue to private Uses without any Account to be made in the Exchequer, contrary to an Act of Parliament, and hath removed two

“ of

" of the King's *Commissioners* of part of the Revenue for
 " refusing to consent to his unwarrantable Actings therein.

" 6. That he hath by indirect Means procured from the
 " King for himself divers considerable Gifts and Grants of
 " Inheritance of the Antient Revenue of the Crown, contrary to Acts of Parliament.

The Articles being read, it was ordered that they be ingrossed, and that a Clause of saving Liberty to exhibit any Articles hereafter against him, and *that he may be sequestred from Parliament, and committed to safe Custody*, be prepared; and that Sir Henry Capel do carry up the Articles to the Lords on Monday.

Monday the 23d of December.

Sir H. Capel acquainted the House, that he had attended the Lords with the *Impeachment* against the *Lord Treasurer*, and delivered it to the *Lord Chancellor*.

The Journal of the Lords shews,

That upon the bringing in of the *Impeachment*, the *Lord Treasurer* desired Copies of all Proceedings concerning the Business, and *the Lords then came to a Resolution, That he should not withdraw.*

That upon the 26th of *December* the *Lord Treasurer* moved for a Copy of his Charge, and that he might not lie long under it.

That upon the 27th of *December* the Lords resolved, *That the Lord Treasurer should not now be confined*, and ordered that he should have a Copy of the Articles, and bring in his Answer before the 3d of *January*, and that he might have Counsel to assist him.

The matter standing thus, upon Monday the 30th of *December*,

The

The Commons being called to attend the King in the House of Lords, His Majesty said, That it was *with great Unwillingness* that he came to *Prorogue* that Parliament, That *all of them were Witnesses that he had not been well used.*

So this Parliament was prorogued to the 4th of February, and in few days after dissolved.

A new Parliament being assembled at *Westminster* upon the 6th of March, 1678.

Upon Thursday the 20th of March, The House of Commons resolved (*Nemine Contradicente,*)

That a Message be sent to the Lords to mind them of the *Impeachment* against *Tho. Earl of Danby*, Lord Treasurer, and to desire that he may be committed to safe Custody. And,

That the Committee of Secrecy draw up farther Articles against the E. of *Danby*.

The Lords ordered the same day, that the E. of *Danby* put in his Answer in Writing to the *Impeachment* on or before the 27th of March.

Friday the 21st of March.

The Lord *Cavendish* attended the Lords, to mind them of the *Impeachment* against the E. of *Danby*, and to desire that he may be forthwith sequestred from Parliament and committed to safe Custody.

After a long Debate the Lords adjourn'd it to the next day.

Saturday the 22d of March.

The Commons repeated their Message about *sequestering* the E. of *Danby* from Parliament, and for committing him to safe Custody, and ordered the Lord *Annesley* to carry up the Message.

The Lords appointed a Committee to prepare a Bill, That the E. of *Danby* may be made for ever incapable of coming
into

into the King's Presence, and of all Offices and Employments, and of receiving any Grants or Gifts from the Crown, and of sitting in the House of Peers. And at a Conference the Duke of Monmouth acquainted the Commons therewith.

Monday the 24th of March.

Sir Francis Winnington reported from the Committee to inspect the Manner of passing the E. of Danby's Pardon,

That the Committee went to Secretary Coventry's Office, and could find no Entry of any Pardon there, and the Secretary declared he knew nothing of the passing it, and that the E. of Sunderland declared he knew nothing of it.

That there was no Memorial of the Pardon at the Office of Signet and Privy-Seal.

That the Lord Privy-Seal told them, that the Pardon never came to him.

That the Lord Chancellor said, That he neither advised, drew, nor altered one word of the Pardon; That the Lord Treasurer delivered it to him, and that it extended to *Impeachments*, and had these general words, *of all Treasons and Crimes* whatsoever, and the words *Omnia & omnimoda Indictamenta, Impetitiones*; and these other words, *Litet indictatus vel non indictatus, Impetitus vel non Impetitus, &c.* and it was to extend to the 27th of February last, and did bear date the first of March instant.

That the Lord Chancellor further declared, that the Lord Treasurer desired to have the Pardon pass with all the Privacy in the World, because he did not intend to make use of it, but stand upon his Innocence, except false Witnesses came against him: That he advised the Treasurer to let the Pardon pass the regular Course, and that he answered him, that the King was resolved to have it pass with all Privacy.

That the King commanded the Chancellor to bring the Seal to Whitehall, and being there he laid it upon the Table,

B

and

and the *King* commanded it to be taken out of the Bag, which he could not hinder; and the King directed to have it sealed, whereupon the Person that usually carried the Purse, ~~As~~ affixed the Seal, and that he did not at that time look upon himself to have the Custody of the Seal, and said it was a *Blank Pardon by Creation*.

Resolved upon this Report, (*Nemine contradicente*) That a *Message* be sent to the Lords to demand Judgment against the *E. of Danby, &c.* And that Sir *Henry Capel* go with the *Message*. And,

Resolved, That an *Address* be made to the *King*, representing the *Irregularity* and *Illegality* of the *Pardon*, and the dangerous Consequence of granting Pardons to Persons impeached.

The Lords sent a *Message* to the *Commons*, That upon Debate this Morning, They had ordered the *Gentleman Usher* of the Black Rod to take the *E. of D.* into Custody, and to bring him to the Bar to Morrow.

The Lords read the Bill the first time for *disabling the E. of Danby*.

Upon Tuesday the 25th of March, 1679.

The *Commons* being inform'd by a *Message* from the Lords, that they had sent to apprehend the *E. of Danby*, but he could not be found; They ordered,

That a *Bill* be brought in to summon the *E. of D.* to render himself to Justice, or in default to attain him.

The Lords that Day read the *Bill* for *disabling the E. of D.* the second time, and committed it.

The 26th of March.

The *Commons* read the first time a *Bill* to summon the *Earl of Danby*.

The

The Lords read *the Bill for disabling the E. of D.* and turned it into a *Banishment*, and ordered it to be ingrossed.

The 26th of March, in the Afternoon.

The Lords read and passed a *Bill for banishing and disabling the E. of D.* and sent it to the Commons.

March 27.

The Commons read a second time and committed *the Bill to summon the E. of D.* and ordered a Clause to be brought in for discovery of all Trusts relating to him, and that he may be made *incapable of being pardoned but by Act of Parliament.*

Then they read the Bill from the Lords for *banishing the E. of D.* and *rejected* the same.

March 29.

The Commons ordered the Bill to *summon the E. of D.* to be ingrossed.

April the first.

The Commons read a third time the Bill to *summon the E. of D.* and resolved,

That the Bill do pass, and the Title be, *An Act for the Attainder of Tho. E. of Danby of High Treason*; and that Sir Robert Peyton do carry it up to the Lords.

3^d *April the 4th.*

The Lords read a time a *Bill for the Attainder of the E. of D.* and resolved that the Bill with the Amendments shall pass, and desired a *Conference* with the Commons upon it, which was had; and,

Sir Francis Winnington reported to the Commons, that the Lord Privy-Seal managed the *Conference*, and what he delivered was to this Effect.

That the Lords chose to deliver back the Bill, by *Conference*, rather than Message, to prevent Debate between them.

That the Lords observe the great Affairs of the Nation are at a Stand, at a Time of the greatest Danger.

That *the King hath always inclined to Clemency* to all his Subjects.

Therefore they desire the two Houses should not press the King to an Act of the greatest Severity; and have therefore passed the Bill, with some Amendments.

The 7th of April.

The Commons took the Lords Amendments to the Bill for Attainder of the E. of *Danby* into consideration; and disagreeing in several of them, they ordered a Committee to prepare Reasons to be offered at a Conference.

8th of April.

Mr. *Powle* reported the Reasons, which were agreed to, (*viz*)

The *Addition* to the Title, shews the Amendments do, from a Bill of *Attainder*, convert the Bill into a Bill for *Banishment*, which the Commons cannot consent to, for these Reasons;

‘ 1. That *Banishment* is not the Legal Judgment in *High-Treason*; and the E. of *D.* being impeached of *Treason*, and *fled from Justice*, hath thereby confessed the Charge, and ought to have the Judgment of *High Treason* for his Punishment.

‘ 2. That the E. of *D.* might make use of this Remission of his Sentence, as an Argument that the Commons were either distrustful of their Proofs, or that the Crimes are not of so high a Nature as *Treason*.

‘ 3. That

‘ 3. That this Example would encourage others that may
 ‘ be hereafter impeached, to withdraw from Justice, and
 ‘ hope to obtain a more favourable Sentence in a *Legislative*
 ‘ Way, than your Lordships would be obliged to pass in
 ‘ your *Judicial* Capacity.

Ordered, that Mr. *Booth* do desire a *Conference* with the
 Lords.

The *Commons* then agreed upon an *Address* to the King to
 this Effect.

‘ That the E. of *D.* standing impeached of High-Trea-
 ‘ son; and to obstruct the Execution of Justice, having with-
 ‘ drawn himself,

‘ They beseech the King to issue a *Proclamation* to com-
 ‘ mand him to render himself; and to command all Ministers
 ‘ of Justice to use Diligence to apprehend him, and to forbid
 ‘ all Subjects to harbour him;

‘ And to require all *Officers* of his *Household* to take care
 ‘ that no Person suffer him to conceal himself in any of the
 ‘ King’s Palaces.

A *Conference* being had, Sir *F. Winnington* reported, That
 the E. of *Huntington* managed the Conference to this Ef-
 fect.

‘ The Lords have desired this Conference, not so much to
 ‘ argue and dispute, as to mitigate and reconcile.

‘ They observe that the Debate of this Bill hath too long
 ‘ obstructed Publick Business.

‘ And if a Way may be found out to satisfy the Publick
 ‘ Fears, the Lords do not think it adviseable to insist upon
 ‘ the utmost and most rigorous Satisfaction to Publick Ju-
 ‘ stice.

‘ They

‘ They acknowledg, That *Banishment* is not the *Legal Judgment* in any Case, since it can never be inflicted but by the *Legislative Authority* : But they see no Reason why the *Legislative Authority* should always act to the utmost Extent of its Power ; for there may be a prudential Necessity sometimes of making Abateiments.

‘ And to remove all Jealousies, the Lords declare, That *nothing done in this Case, shall ever be drawn into Example for the Time to come.*

10 April.

The *Lord Privy-Seal* reported the Effect of a Free Conference had with the Commons, about the Amendments to the Bill about the E. of *Danby*.

That Mr. *Edward Vaughan* urged and reinforced the Reasons offered at a former Conference.

‘ That *Reason and Justice* being for the Bill as they sent it up, they could not yet doubt the Lords Concurrence.

‘ They hoped that their Lordships, who are *Judges for the Kingdom*, and not only for themselves, will follow the Example of their *Ancestors*, and proceed by Rules of Law, which are to guide in passing Acts of *Parliament*, as well as in the ordinary Course of *Judicature*.

That Sir *Fra. Winnington* urged *Precedents* for the like Attainder, Old and New, and added these Reasons.

1. For the Lords to change the *Punishment*, when he appears he may say, that the Commons agreeing to a Composition, admit their Proofs are not full for Treason.

2. Though *we thirst not after Blood*, and might have consented to a Bill that gave him not *Advantage instead of Punishment*,

nishment, as this by the Amendments would do ; yet as it is, we cannot consent for that Reason.

3. The *Earl* punishes himself ; our Bill is not rigorous, but according to the Rules of Justice against a Person impeach'd, and *dares not abide his Trial*.

4. Flight is odious in the Eye of the Law.

5. This would shew as if different Degrees of Persons should have different Degrees of Justice. *Would your Lordships so make Provision for a flying Commoner ? Besides, this is not the flight of an Innocent Moses from the Egyptians, but of a wicked Cain out of the sense of his Guilt.*

That Mr. Powle spoke next, and said,

There are but two Reasons why Punishment should be mitigated.

1. When a Man seems penitent, whereas *this Man affronts the Justice of King and Parliament*, and *lurks* hereabouts, doing ill Offices, and hindring the great Affairs of the Kingdom.

2. When a Man merits Favour in his Office ; but *we cannot find one good Thing he ever did, whilst he was in Power and Place.*

That Mr. Sacheverel added,

It is but a Bill of *Summons*, to keep him from perfecting his *Treasons* abroad, and continuing his *Enmity* to his Country ; but as your *Lordships* have made it, it is an *Act of Indemnity* and Safety to him, giving him leave to go to repair the little loss he is under here, by the *Favour of those beyond-Sea*, whom he hath served against his Country.

Mr. *Vaughan* concluded, saying ; That *Justice* should have its Course, is the prime Consideration : the *Earl* stops all himself, therefore he should not have Benefit thereby, but ought to find that *Justice* will be too hard for his *Evasions*.

The

The Lord Privy-Seal having thus made Report of the Conference, said; So they delivered us the Bill again, with our Amendments, with Expression of hopes and desire of our Concurrence with them, that Justice may have its Course, and *the great Affairs of Parliament be no longer obstructed, by spending more Time on him, who hath brought the Kingdom into so sad a Condition.*

10th of April in the Afternoon.

The Lords sent to desire a present free Conference with the Commons; and agreed to propose to leave out the Time in the Bill for his coming in, and so to make it an immediate Banishment; and to offer, that there may be a Forfeiture of his Estate, and this to be by way of Agreement.

The Lords ordered, That an Entry be made in the Journal, That the VOTE of this House, of the 23d of Decemb. 1678, concerning the E. of Danby's not withdrawing, after he had been heard in his Place upon the Impeachment against him; and the Vote of the 27th of Dec. concerning his not being committed, shall not be drawn into Precedent for the future.

12th of April.

Sir Fra. Winnington reported the Substance of the Matters proposed by the Lords at the last free Conference, (*viz.*)

The Lord Privy-Seal said, that it was acknowledged that the Reasons of the Commons for passing of the Bill, as they proposed, were unanswerable; and therefore the Lords were content to make the Bill absolute, without giving the E. of D. any Day to appear, and the Penalties to continue.

He observed, that he would not only by the passing this Bill be ruined, but likewise those Acquisitions which he got by Marriage into a Noble Family would be lost.

And he intimated, that if the Commons would have any other Penalties added, the Lords would leave it to them, so
tha_t

that they run not to his *absolute Destruction*.

The Earl of *Shaftsbury* said, That *they were as willing to be rid of the E. of D. as the Commons*: That he thought the *Way* proposed would be a Means to have the Bill pass; for the *Commons* might have other Penalties, if they would, as *Confiscation* of Estate, and he thought, *Honours*; and if the *Commons* insisted thereon, he knew not but they might be agreed to be inserted in the Bill.

He desired that the *Commons* would consider that there were weighty *Reasons*, which are better *understood* than *expressed*, that prove it necessary, for the *Publick Good*, that this Bill should *speedily* pass.

The 12th of April in the Afternoon.

The *Commons*, upon their Desire, had a free Conference with the Lords; and it being ended, the E. of *Shaftsbury* reported, That Sir *Fra. Winnington* managed this Conference, and told us, that the *Methods in the Commons Proceedings about the E. of Danby had been acknowledged to be right*, and according to former Precedents, and therefore every way justifiable.

That your *Lordships* did declare, that your most cogent *Reasons* were better to be understood than express'd.

That the *Commons* agreed, that this did occasion long Disputes, and that Delay was very prejudicial; and therefore earnestly desired that we would agree with them in the Bill, for they *adhered to their former Proceedings*.

14th of April.

The *Lords*, after a long Debate, resolved to agree with the *Commons*, to the Bill for the *Attainder* of the E. of *Danby* of *High-Treason*, in case he come not in by a Day prefixed; and they delivered it to the *Commons* at a Conference.

Sir *Fra. Winnington* carried a Message to the Lords, that the *Commons* agreed the *Bill of Attainder of the E. of Danby*.

Thereupon the *Lords* ordered the Lord *Privy-Seal*, the Duke of *Monmouth*, the Earl of *Bridgwater*, and the Lord *Grey of Werke* to acquaint the *King*, that the Bill is passed both Houses; and in respect of the shortness of Time limited for the *Earl's* coming in, that the *King* would appoint a short Time for their tendering the Bill for his Royal Assent.

15th of April.

The Lord *Privy-Seal* reported, that he and the other Lords presented the Address concerning the *Royal Assent* to the Bill of *Attainder* of the *E. of D.* and his Majesty said that he will be here to morrow Morning.

16th of April.

The Gentleman-Usher of the Black-Rod acquainted the *Lords*, that the *E. of D.* had rendered himself into his Custody the last Night; and he brought him to the Bar, where he kneeled till the Lord-Chancellor bid him stand up; and his *Lordship* told him, That he stood *Impeached*, &c. and had Time given him this Parliament to answer; which he had not done, but had withdrawn himself, and caused the *Parliament* to spend much Time concerning him; and demanded what he had to say to this Matter?

To which the *E. of D.* making some Answer by way of Excuse for his withdrawing, and hoping to clear his Innocence, made several Requests in order to his answering the Charge, and making his Defence upon his Trial: And being withdrawn, the House considered his Requests; and being again brought to the Bar, and kneeling, the *Chancellor* did let him know, that he may have a Copy of the Articles against him; and that the House gave him Time to put in his Answer, till the first Day of their sitting after *Easter*; and do order that

Serjeant

Serjeant *Raymond*, Mr. *Sannders*, and Mr. *Holt*, be assigned Counsel for him as he requested, &c. And as to his last Request, to remain under the Custody of the Black-Rod, *their Lordships adjudged that he stand committed to the Tower.*

24th of April.

The Lords ordered the Lieutenant of the *Tower* to bring the E. of *D.* to the Bar at ten to Morrow, to put in his Answer to the *Impeachment.*

25th of April.

The E. of *Danby* being brought to the Bar, *pleaded a Pardon from the King*; which was read, and then sent to the House of Commons; who referred it to a Committee to examine the Matter of the Plea, and to search how Precedents stand in relation to the Pardon, and in what manner and by what Means it was obtained.

28th of April.

Sir *Fra. Winnington* reported from the Committee to examine the E. of *D's Plea*, as followeth.

- ' 1. We find *no Precedent that ever any Pardon was granted to any Person impeached* by the Commons of Treason.
- ' 2. The Committee refers to a former Report of the manner of passing this *Pardon.*
- ' 3. We cannot as yet discover the *Advisers or Promoters of the Pardon.*

Resolved, that a Message be sent to the Lords, to desire them to demand of the E. of *D.* whether he will abide by the *Plea* of his *Pardon*? And that Sir *Fr. Winnington* go with the Message.

29th of April.

The E. of *Danby* was brought to the Lords Bar, and was told by the *Chancellor*, That the Commons *demand*ed to know whether he would abide by his *Plea*? To which he said, the Question was New to him, and of very great Importance,

and therefore he desired Time to advise on it ; and their *Lordships* gave him time till Saturday.

Saturday the 3d of May.

The Earl of *D.* being brought to the Bar, the *Chancellor* ask'd him for his Answer ; to which he said, The *Plea* I have put in, was by the Advice of my Counsel, who tell me, that my Pardon is good in Law, and advise me to insist upon my *Plea*, which *I now do*, and desire that my Counsel may be heard to make out the Validity of my Pardon, and that Serjeant *Barrel* and Mr. *Pollexfen* may be added to the Counsel formerly assigned to me, and they were accordingly assigned his Counsel.

Monday May the 5th.

The Commons. took the E. of *Danby's* Answer into Consideration, and resolved, (*Nemine Contradicente*)

That the *Pardon* pleaded by the E. of *D.* is illegal and void,

That the House will go to the Lords Bar, and demand their Judgment against the E. of *D.* for that the *Pardon* by him pleaded, is illegal, and ought not to bar or preclude the Commons from having Justice upon their Impeachment.

Ordered, That Mr. *Thyn* go up to the Lords, to desire them to sit some time.

The *Speaker* with the Commons came to the Lords Bar, and said, *My Lords*, The *Knights, Citizens and Burgeſſes* in Parliament assembled, are come up to demand Judgment in their own Names, and in the Names of *all the Commons of England*, against *Tho. E. of Danby*, who stands Impeached by them before your Lordships of High-Treason, and diverse high Crimes and Misdemeanours, to which he hath pleaded a *Pardon*, which *Pardon* the Commons conceive to be illegal and void, and therefore they do demand Judgment of your Lordships accordingly.

Ordered

Ordered by the Lords, That this House will take *this Demand* into consideration to morrow Morning; and all the Judges and Mr. Attorney General are to attend the House.

Tuesday the 6th of May.

The Lords ordered, That *Saturday* next is appointed for the hearing the E. of D. to make good his Plea in *Westminster-hall*; and that an Address be made to his Majesty, to appoint a *High Steward* for that purpose, and for the Trials of the five Lords in the Tower.

Thursday the 8th of May.

The Lords had a *Conference* with the Commons, and the Lord Privy-Seal reported the Effect thereof, which was, ' That the Commons suppose the Lords intend in all proceedings upon Impeachments depending before them, to follow the usual Course and Method of Parliament; and they cannot apprehend what should induce the Lords to address for a Lord High-Steward, in order to the determining the Validity of the Pardon of the E. of D. and for the Trial of the five Lords, because they conceive the Constitution of a *High-Steward* is not necessary, but that Judgment may be given in Parliament upon Impeachments without a *High-Steward*.

' The Commons propose, that a Committee of both Houses be nominated to consider of the most proper Ways and Methods of Proceedings upon Impeachments, according to the usage of Parliament; that thereby Interruptions and Delays in the Proceedings may be avoided.

The Lords after a *long Debate*, whether to agree with the Desires of the Commons to have a Committee of both Houses, &c. resolved in the *Negative*.

Friday

Friday the 9th of May.

The Lord Privy-Seal, at a Conference, told the Commons,
 ‘ That the Lords do not agree to a Committee, because they
 ‘ do not think it conformable to the Rules and Orders of
 ‘ the Proceedings of this Court, which is, and ever must
 ‘ be tender in Matters relating to their *Judicature*.

The Commons resolved, *That no Commoner whatsoever, shall presume to maintain the Validity of the Pardon of the E. of D. without leave of the House; and that the Persons so doing shall be accounted Betrayers of the Liberties of the Commons of England.*

That the Answer delivered by the Lords this Day, tends to the Interruption of the good Correspondence between the two Houses.

Saturday the 10th of May.

The E. of D. petitioned the Lords, that his Counsel *dare not appear to argue for him, by reason of a Vote of the Commons*, and is thereby totally disabled of making his Legal Defence.

The Earl of Salisbury reported the Effect of a Conference with the Commons; ‘ That your *Lordships* do not offer any
 ‘ Answer, or satisfaction to the Commons in their *necessary*
 ‘ *Proposals*, that you do intend in all proceedings upon the
 ‘ Impeachments, to follow the usual Course and Methods of
 ‘ *Parliaments*.

‘ And that you have not given the least Answer or Satisfaction, concerning your addressing the King for a *High-Steward*.

‘ That your *Lordships*, (without any Reason assigned, save
 ‘ only that you say, that you do not think it conformable to
 ‘ the Rules and Orders of this Court) have refused to agree
 ‘ in appointing a Committee, though not heretofore denied,
 ‘ when ask’d upon the like Occasions, and at this time desired
 ‘ purposely to avoid Disputes and Delays.

‘ And

‘ And therefore the Commons desire us to acquaint you,
 ‘ that they cannot proceed to the Trial of the Lords, be-
 ‘ fore the Methods of Proceedings be adjusted between the
 ‘ two Houses.

The Question was put, whether to appoint a Committee, to meet a Committee of Commons, to confer about the Methods of Proceedings, in order to the Trial of the *Lords*, and resolved in the *Negative*.

Mr. *Charles Bertie*, being called into the House of Commons, and examined to several Questions;

Resolved, That the House is not satisfied with the Answers given by Mr. *Bertie*.

Sir *Robert Howard* informs the House, That there has been paid to Mr. *Bertie* for *secret Service*, from *Lady-day* 1676, to the 20th of *March* 1679, the Sum of 252467 *l.* 1 *s.* 9 *d.*

Ordered, That Mr. *Bertie* be committed to the Custody of the Serjeant at Arms, for his *Contempt* to the House.

Sunday the 11th of May.

The Lords having that Day had two Conferences with the Commons, did at length order, That a Committee of Lords should meet a Committee of the Commons, to consider of Propositions and Circumstances, in reference to the Trials of the Lords in the *Tower*; and the Commons appointed a Committee, to join with the Committee of Lords, at nine of the Clock to morrow Morning.

Tuesday the 13th of May.

‘ Resolved by the Lords Spiritual and Temporal, That the
 ‘ Lords Spiritual have a Right to stay in Court in Capital
 ‘ Cases, till such time as Judgment of Death comes to be pro-
 ‘ nounced.

14th of May.

The Lords *explained* themselves, that their meaning is, that the *Lords Spiritual* have a *Right to stay*, and sit in Court, till the Court proceed to the Vote of *Guilty or not Guilty*.

Munday the 26th of May.

The Lords having resolved to proceed to the Trials of the five Lords in the *Tower* the next Tuesday, the Commons at a Conference offered a *Narrative* and *Reasons* to their Lordships, for not proceeding to the Trials of those Lords before the Trial of the E. of *Danby's Plea*, which were to this Effect.

‘ The *Commons* acknowledg, that the Crimes charged upon the Earl of *Powis*, Viscount *Stafford*, Lord *Petre*, Lord *Arundel*, and Lord *Belasis*, are of deep Guilt, and call for speedy Justice; but withal, they hold any *Change in Judicature in Parliament*, without Consent of Parliament, to be of pernicious Consequence, and conceive themselves obliged to transmit to Posterity, all the Rights which they have received from their Ancestors. And by minding your *Lordships* of the Progress between the two Houses, they doubt not but to make it appear, their Aim has been only to preserve that Right, and that there is *no delay of Justice on their Parts*; and to that End they offer the ensuing *Narrative* and *Reasons*.

‘ That the *Commons*, in bringing the E. of *D.* to Justice, have laboured under many great Difficulties.

‘ It is known to your *Lordships*, that upon the Impeachment of the Commons against the E. of *D.* even the *common Justice of sequestering him from Parliament, and committing him to Custody, was then required* by the *Commons*, and *denied* by the *Peers*, though he then sat in the House; of which you have been so sensible, that at a Conference the

' 10th of April, you declar'd, That it was the Right of the
 ' Commons, that upon an Impeachment, a Peer impeached
 ' ought to be ordered to withdraw, and be committed: And had
 ' not that Justice been denied, a great part of this Session had
 ' been saved, and employed for preservation of the King,
 ' and the Security of the Nation; and in prosecution of the
 ' other five Lords; neither had he had the Opportunity of
 ' procuring that *illegal Pardon* which he hath now pleaded,
 ' nor of wasting so great a Part of the Treasure of the King-
 ' dom, as he has done, since the Commons exhibited their
 ' Articles of *Impeachment* against him.

' After which Time thus lost, by the denial of Justice, the
 ' Bill being ready for the Royal Assent, the *Earl* rendred him-
 ' self, and was committed to the Tower, and then pleaded the
 ' Pardon: Which being *illegal and void*, the Commons de-
 ' manded Judgment against him, not doubting but your Lord-
 ' ships did intend to follow the usual Course and Proceedings
 ' of Parliament.

' But the Commons were not a little surprized by the
 ' Message of the 7th of May, acquainting them, That as
 ' well the Lords Spiritual as Temporal had ordered, That the
 ' 10th of May the E. of D. should be heard to make good
 ' his Plea; and that on the 13th the other five Lords should
 ' be tried; and that your Lordships had addressed to the
 ' King for naming a Lord High-Steward, as well in the Case
 ' of the E. of D. as the other five Lords.

' Upon consideration hereof, the Commons found, that the
 ' admitting the Lords Spiritual to exercise Jurisdiction in these
 ' Cases, was an *Alteration of Judicature* in Parliament; if a
 ' Lord High-Steward should be necessary on Impeachments of the

‘ Commons, *Impeachments* might be defeated, by suspending or denying a Commission to constitute a *Lord High Steward*.

‘ And that the Days of Trial appointed were then so near, that these Matters, and the Methods of Proceedings could not be adjusted by Conference; and consequently the Commons could not then proceed to Trial, unless they should admit *the Enlargement of the Lords Jurisdiction*, and sit down under Hardships, though with the hazard of their Power of Impeaching.

‘ For reconciling Differences in these weighty Matters, the Commons proposed, that a Committee of both Houses might be appointed: At which Committee it was first proposed, that the Trial of the five Lords might be put off; and it was agreed, that the Proposition as to the Time of the Trials should be last considered.

‘ After which the Commons communicated to your Lordships their Vote, that they insisted on the former Vote, That *the Lords Spiritual ought not to have any Vote* in the Proceeding against the Lords, &c. Which Vote extended to the E. of D. as well as the other five Lords; but the Commons have received no Answer of that Vote, save that *the Bishops have asked leave*, that they might withdraw from the Trial of the five Lords, with the Liberty of entering their *Protestation*.

‘ And though the Commons Committee have declared to your Committee, that that was a necessary Point of Right to be settled before the Trials, and offered to debate it, your Committee always answered, That they had not
‘ Power

Power to confer upon, or give answer concerning that Matter.

‘ And yet your Lordships, *without giving any Answer to the said Vote, and contrary to the said Agreement*, on the 22^d of May sent a Message, declaring, *The Lords Spiritual, as well as Temporal*, had ordered the Trial of the five Lords the 27th Instant.

‘ So that the *Commons* apprehend, that you have not only departed from what was agreed on, but conclude from the Message, and the *Vote* of the 14th, That the Lords Spiritual have a Right to sit in Court, till the Court proceeds to the Vote of *Guilty, or Not Guilty*; and from the *Bishops* asking leave, &c. and by their persisting still to go on and vote in Proceedings upon the *Impeachments*, that their desire of leave to withdraw, is only an *Evasive Answer* to the said Vote, and intended as an Argument for a Right of *Judicature* in Proceedings upon Impeachments, and as a Reserve to judg upon the E. of D. his Pardon; and upon these and such other Impeachments, altho no such Power was ever claimed by their Predecessors, but is utterly denied by the Commons.

‘ The Commons are therefore obliged not to proceed to the Trial of any of the Lords the 27th Instant, but to adhere to their *Vote*; and for their so doing, besides what hath been now and formerly said, do offer these *Reasons*.

‘ 1. Because the Lords have received the E. of Danby’s Pardon with a *long and unusual Protestation, wherein he hath aspersed the King, as if he had Commanded or Countenanced the Crimes he stands charged with, and particularly suppres-*

‘ sing and discouraging the Discovery of the Plot, and endeavouring to introduce a Tyrannical way of Government — and it ought to be the principal Care of both Houses, to vindicate the King, by doing Justice upon the said Earl.

‘ 2. The setting up a Pardon to be a Bar of an Impeachment, defeats the whole Use and Effect of Impeachments — therefore, this Case ought to be determined before that of the five Lords.

‘ 3. Until the Commons have Right done against this Plea of Pardon, they may justly apprehend, that the whole Justice of the Kingdom, in the Case of the five Lords, may be defeated by Pardons of the like Nature.

‘ 4. An Impeachment is virtually the Voice of every particular Subject, crying against an Oppression; and it would prove a Matter of ill Consequence, that the Universality of the People, should have an occasion ministred and continued to them, to be apprehensive of utmost Dangers from the Crown, from which they of Right expect Preservation.

‘ 5. The Commons exhibited Articles of Impeachment against the E. of D. before any of the five Lords, and demanded Judgment upon those Articles; whereupon your Lordships having appointed the Trial of the said Earl, to be before that of the other Lords, Now your having since inverted that Order, gives a great Cause of doubt to the Commons, that if they should proceed upon the Trials of these Lords, in the first Place, not only Justice would be obstructed in the Case of these Lords, but that they shall never have Right done them in the Matter of the Plea of Pardon, which is a new Device to frustrate Publick Justice in Parliament. Which

‘ Which Reasons being duly weighed by your Lordships, the Commons doubt not but you will agree, that the Commons ought not, nor cannot, without deserting their Trust, depart from their former Vote :

‘ That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the Tower ; and when that Matter shall be settled, and the Methods of Proceedings adjusted, the Commons shall then be ready to proceed upon the Trial of the E. of D. against whom they have already demanded Judgment, and afterwards to the Trial of the other five Lords in the Tower :

Tuesday the 27th of May.

The Lords having long debated the foregoing Reasons, and the Question being put, whether to insist upon the Vote concerning the Lords Spiritual ; it was resolved in the Affirmative.

Dissentientibus,

Buckingham.	Stamford.	Newport.
Bedford.	Scarsdale.	Say and Seal.
Suffolk.	Delamer.	Wharton.
Grey.	Salisbury.	Strafford.
Leicester.	Kent.	Howard.
Derby.	Shaftsbury.	Paget.
Clare.	Rocheſter.	Pauconberg.
Huntington.	North and Grey.	Windsor.
Wincheſter.	Townſhend.	
Lovelace.	Herbert.	

Then the King that ſame Day, prorogued the Parliament to the 14th of Auguſt next, and it was (according to the Practice of that Time) quickly diſſolved by Proclamation.

Upon

Upon the 21st of March 1680, a Parliament was assembled at Oxford.

Where the Commons upon *Friday the 25th of March*, Ordered,

That Mr. *Hambden*, Sir *Francis Winnington*, &c. do inspect the *Journals* of the late Parliaments, relating to the *Impeachment* of the *E. of Danby*, and Mr. *Hambden* made report thereof; and it was thereupon Ordered,

That the Lord *Cavendish* go up with a Message to the Lords to mind them, that the Commons had formerly by their *Speaker*, demanded Judgment upon the *Impeachment* against the *Earl of Danby* of *High-Treason*, and to desire them to appoint a Day to give Judgment against him.

Upon Monday the *28th of March*, 1681. the King dissolved this *Parliament*, and never called another, though he survived almost four Years.

F I N I S.

